

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE APRIL 26, 2005

SENATE BILL

No. 296

Introduced by Senator Campbell

February 16, 2005

An act to amend Section 16350 of the Probate Code, relating to trusts , *and declaring the urgency thereof, to take effect immediately* .

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as amended, Campbell. Trusts.

Existing law generally requires a trustee to allocate money received from an entity; to income. However, existing law requires a trustee to allocate money received in total or partial liquidation of an entity to principal. Existing law also provides that money is received in partial liquidation if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's yearend financial statements immediately preceding the initial receipt.

This bill would revise the latter provision to specify that money is received in partial liquidation if the total amount of money and property received by all owners, collectively, in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as determined in the manner described above. The bill would also provide that if that receipt is allocated between December 2, 2004, and ~~January 1, 2006~~ *the operative date of this bill*, a trustee shall not be liable for allocating the receipt to income if the amount received by the trustee, when considered together with the amount received by all owners, collectively, exceeds 20% of the entity's gross assets, but the amount received by the trustee does not exceed 20% ~~does not exceed~~ 20% of the entity's gross assets.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 16350 of the Probate Code is amended
2 to read:
3 16350. (a) For the purposes of this section, “entity” means a
4 corporation, partnership, limited liability company, regulated
5 investment company, real estate investment trust, common trust
6 fund, or any other organization in which a trustee has an interest
7 other than a trust or decedent’s estate to which Section 16351
8 applies, a business or activity to which Section 16352 applies, or
9 an asset-backed security to which Section 16367 applies.
10 (b) Except as otherwise provided in this section, a trustee shall
11 allocate to income money received from an entity.
12 (c) A trustee shall allocate to principal the following receipts
13 from an entity:
14 (1) Property other than money.
15 (2) Money received in one distribution or a series of related
16 distributions in exchange for part or all of a trust’s interest in the
17 entity.
18 (3) Money received in total or partial liquidation of the entity.
19 (4) Money received from an entity that is a regulated
20 investment company or a real estate investment trust if the
21 money distributed is a capital gain dividend for federal income
22 tax purposes.
23 (d) For purposes of paragraph (3) of subdivision (c):
24 (1) Money is received in partial liquidation (A) to the extent
25 that the entity, at or near the time of a distribution, indicates that
26 it is a distribution in partial liquidation, or (B) if the total amount
27 of money and property received by all owners, collectively, in a
28 distribution or series of related distributions is greater than 20
29 percent of the entity’s gross assets, as shown by the entity’s
30 yearend financial statements immediately preceding the initial
31 receipt. If that receipt is allocated between December 2, 2004,
32 and ~~January 1, 2006~~ *the operative date of the act adding this*
33 *sentence*, a trustee shall not be liable for allocating the receipt to

1 income if the amount received by the trustee, when considered
2 together with the amount received by all owners, collectively,
3 exceeds 20 percent of the entity's gross assets, but the amount
4 received by the trustee does not exceed 20 percent of the entity's
5 gross assets.

6 (2) Money is not received in partial liquidation, nor may it be
7 taken into account under clause (B) of paragraph (1), to the
8 extent that it does not exceed the amount of income tax that a
9 trustee or beneficiary is required to pay on taxable income of the
10 entity that distributes the money.

11 (e) A trustee may rely on a statement made by an entity about
12 the source or character of a distribution if the statement is made
13 at or near the time of distribution by the entity's board of
14 directors or other person or group of persons authorized to
15 exercise powers to pay money or transfer property comparable to
16 those of a corporation's board of directors.

17 *SEC. 2. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety*
19 *within the meaning of Article IV of the Constitution and shall go*
20 *into immediate effect. The facts constituting the necessity are:*

21 *In order to minimize the number of people adversely affected*
22 *by further application of the appellate court's rationale in Estate*
23 *of Thomas (2004) 124 Cal. App. 4th 711, which will produce*
24 *results in other controversies that are manifestly unfair to trust*
25 *remainder beneficiaries if it is applied, it is necessary that this*
26 *bill take effect immediately.*